

## HOUSE BILL NO. 400

INTRODUCED BY D. WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSURE OF FORCED AIR HEATING, VENTILATION, AND AIR CONDITIONING CONTRACTORS; PROVIDING FOR A BOARD OF FORCED AIR HEATING, VENTILATION, AND AIR CONDITIONING CONTRACTORS; REQUIRING THE DEPARTMENT OF COMMERCE TO ADOPT MINIMUM STANDARDS FOR MECHANICAL EQUIPMENT OR SYSTEMS INSTALLATIONS; REQUIRING MECHANICAL PERMITS IN CERTAIN SITUATIONS; PROVIDING THAT INSTALLATIONS OF MECHANICAL SYSTEMS ARE SUBJECT TO MECHANICAL CODE INSPECTIONS; PROVIDING THAT A PERSON, FIRM, OR CORPORATION CURRENTLY WORKING IN THE FIELD OF FORCED AIR HEATING, VENTILATION, AND AIR CONDITIONING IS CONSIDERED LICENSED FOR A PERIOD OF 1 YEAR FOLLOWING THE EFFECTIVE DATE OF THIS ACT; AMENDING SECTIONS 37-1-317 AND 50-60-109, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Short title.** [Sections 1 through 3 and 5 through 17] may be cited as the "Forced Air Heating, Ventilation, and Air Conditioning Contractors Act".

**NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 3 and 5 through 17], the following definitions apply:

(1) "Air conditioning" means the process of treating air to meet the requirements of a conditioned space by controlling, either simultaneously or individually, the air's temperature, humidity, cleanness, and distribution.

(2) "Board" means the board of forced air heating, ventilation, and air conditioning contractors provided for in [section 4].

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Ductwork" means the air distribution arrangement for supply, return, and exhaust in air conditioning systems and in non-air conditioning systems.

(5) "Forced air heating, ventilation, and air conditioning" means the construction, installation,

1 alteration, maintenance, and repair of forced air and ventilation systems, equipment, and ductwork to  
2 provide air conditioning for occupants of buildings and structures.

3 (6) "Journeyman" means a person actively working with the tools of the trade performing forced  
4 air heating, ventilation, and air conditioning work under [sections 1 through 3 and 5 through 17].

5 (7) "Master" means a person who:

6 (a) has qualified for and been issued a license by the board;

7 (b) may actively work with the tools of the trade;

8 (c) may plan, estimate, and bid for forced air heating, ventilation, and air conditioning work; and

9 (d) may contract forced air heating, ventilation, and air conditioning work under [sections 1  
10 through 3 and 5 through 17].

11

12 **NEW SECTION. Section 3. Exemptions.** Licensure is not required in forced air heating, ventilation,  
13 and air conditioning installations or work done by:

14 (1) an owner of a single-family residence used exclusively for personal use;

15 (2) railroads, smelters, underground mining operations, mills, or refineries on their properties by  
16 owners or employees or other businesses doing routine repair or maintenance;

17 (3) public utilities, regulated by the public service commission, doing routine repair and  
18 maintenance; or

19 (4) propane or fuel oil dealers doing routine repair and maintenance.

20

21 **NEW SECTION. Section 4. Board of forced air heating, ventilation, and air conditioning**  
22 **contractors.** (1) There is a board of forced air heating, ventilation, and air conditioning contractors.

23 (2) The board consists of nine members appointed by the governor with the consent of the senate.  
24 The members are:

25 (a) two masters who have been residents of this state for more than 1 year and who have been  
26 licensed as a master for at least 5 of the 8 years immediately preceding appointment;

27 (b) two journeymen who have been residents of this state for more than 1 year and who have  
28 been licensed as journeymen for at least 5 of the 8 years immediately preceding appointment;

29 (c) a registered professional engineer qualified to practice mechanical engineering;

30 (d) a person representing the fire marshals of this state;

(e) a person representing a supplier or manufacturer selling air conditioning equipment; and  
(f) two members of the public not engaged in forced air heating, ventilation, and air conditioning contracting.

(3) The members shall serve staggered 4-year terms. A vacancy on the board must be filled in the same manner as the original appointment.

(4) The members are entitled to compensation and travel expenses as provided in 37-1-133.

(5) The board is allocated to the department for administrative purposes only as provided in 2-15-121.

**NEW SECTION. Section 5. Organization -- meetings -- quorum -- rulemaking authority -- duties.**

(1) The board shall meet at least semiannually.

(2) A majority of the members constitutes a quorum necessary for the transaction of business.

(3) The board shall:

(a) adopt rules that it considers necessary to carry out the provisions of [sections 1 through 3 and 5 through 17];

(b) hear contested cases coming under the provisions of [sections 1 through 3 and 5 through 17];

(c) set license fees and determine how the fees are to be collected;

(d) establish continuing education standards and requirements for individuals licensed under [sections 1 through 3 and 5 through 17]; and

(e) set minimum insurance requirements for businesses and individuals licensed under the provisions of [sections 1 through 3 and 5 through 17].

**NEW SECTION. Section 6. License required.** (1) Except as provided in [section 3], a person working in the field of forced air heating, ventilation, and air conditioning in this state, either as a master or a journeyman, shall first obtain a license, as provided in [sections 6 through 17].

(2) A person who receives a license under the provisions of [sections 1 through 3 and 5 through 17] shall carry the license or proof of licensure at all times while working on a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the board and made known by the department to each licensee when a license is issued.

1        NEW SECTION. **Section 7. Application -- contents -- requirements.** A person, firm, or corporation  
2 that desires a license to work in the field of forced air heating, ventilation, and air conditioning in this state,  
3 either as a master or as a journeyman, shall require the applicant to apply to the department by filing a  
4 written application stating the applicant's place of residence, age, experience, and the place where the  
5 applicant has acquired the necessary experience.

6  
7        NEW SECTION. **Section 8. Apprenticeship allowed.** [Sections 1 through 3 and 5 through 17] do  
8 not prohibit a person from working as an apprentice in the trade of forced air heating, ventilation, and air  
9 conditioning with a master licensed by the department under the supervision of a licensed journeyman.  
10 Only those apprentices registered with the department of labor and industry will be recognized by the  
11 department. The name and residence of each apprentice and the names and residences of each  
12 apprentice's employers must be filed and kept with the department.

13  
14        NEW SECTION. **Section 9. Qualifications of applicant for journeyman's license -- restriction on**  
15 **authority.** (1) The following requirements must be met by an applicant for a journeyman's license:

16        (a) a specific record of 4 years' experience in the field of forced air heating, ventilation, and air  
17 conditioning of a nature satisfactory to the board. This experience requirement may be fulfilled by working  
18 4 years in a major phase of the forced air heating, ventilation, and air conditioning business, verified by  
19 time or pay records, or by completing an apprenticeship program meeting the standards set by the  
20 department of labor and industry or the United States department of labor, bureau of apprenticeship and  
21 training. Credit towards this experience requirement may be given for time spent attending an accredited  
22 trade or other school specializing in training of value in the field of forced air heating, ventilation, and air  
23 conditioning and must be approved by the board.

24        (b) satisfactory completion of an examination conducted by the department, subject to  
25 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of forced  
26 air heating, ventilation, and air conditioning and establishing by practical demonstration the applicant's  
27 competence in the special skills required in the field of forced air heating, ventilation, and air conditioning.

28        (2) A licensed journeyman may perform work only in the employment of a firm, corporation, or  
29 business that has in its employment a licensed master, unless otherwise permitted by rule of the board.

1        **NEW SECTION. Section 10. Qualifications for master's license -- restriction on authority.** (1) The

2 following requirements must be met by an applicant for a master's license:

3        (a) evidence of 4 years' experience as a journeyman in the field of forced air heating, ventilation,  
4 and air conditioning, verified by time or pay records of actual forced air heating, ventilation, and air  
5 conditioning experience; or

6        (b) evidence of 3 years' experience working with a licensed master or in a supervisory capacity  
7 in the field of forced air heating, ventilation, and air conditioning, which may run concurrently with the  
8 requirement in subsection (1)(a); and

9        (c) satisfactory completion of an examination for master designation, testing the applicant's  
10 knowledge of the field of forced air heating, ventilation, and air conditioning and demonstrating the  
11 applicant's skill and ability in the field of forced air heating, ventilation, and air conditioning.

12        (2) For purposes of subsection (1), a year's experience is 1,500 hours or more of work in a  
13 continuous 12-month period.

14        (3) A master may not allow the master's license to be used by any person, firm, corporation, or  
15 business other than the master's own firm, corporation, or business or a master that is a full-time  
16 employee in a firm, corporation, or business, for the purpose of obtaining permits or for doing forced air  
17 heating, ventilation, and air conditioning work under the master's license.

18  
19        **NEW SECTION. Section 11. Examination -- issuance of license.** (1) An applicant for a license to

20 work in the field of forced air heating, ventilation, and air conditioning shall submit to an examination  
21 administered by the department, subject to 37-1-101(4). The department shall examine each applicant for  
22 a license to determine the applicant's skill and qualifications as a master or journeyman.

23        (2) A person who successfully passes the examination prescribed by the board must be issued  
24 a license authorizing the person to engage in the field of forced air heating, ventilation, and air conditioning  
25 as a master or journeyman in this state.

26        (3) In the case of a firm or corporation, the examination and issuance of a license to an individual  
27 of the firm or corporation or to a principal of the firm or corporation satisfies the requirements of [sections  
28 1 through 3 and 5 through 17] as to masters but not as to journeymen. An individual, firm, or corporation  
29 may not do the work of a master unless licensed under [sections 1 through 3 and 5 through 17].

30        (4) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case

basis at the board's discretion and in accordance with criteria determined by the board, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible but who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date.

**NEW SECTION. Section 12. Examination fee -- renewal fee.** (1) An applicant for licensure may not submit to an examination prescribed by the board until the applicant has deposited with the department an examination fee prescribed by the board.

(2) A license expires on the date established by department rule. A licensee may renew a license without examination at any time prior to the expiration date by submitting a written request for renewal and the payment of the fee for renewal as set by the board.

(3) Fees prescribed by the board pursuant to this section must be commensurate with the costs of administering examinations or renewal applications.

**NEW SECTION. Section 13. Deposit of fees.** (1) There is a state special revenue fund to the credit of the board.

(2) Fees received under [sections 1 through 3 and 5 through 17] and citation fines paid voluntarily must be deposited in the state special revenue fund for use by the board, subject to 37-1-101(6).

**NEW SECTION. Section 14. Display of license -- licenses not transferable.** (1) The board shall issue a license of a design approved by the board to each licensee.

(2) A person licensed shall display the license in plain view in the licensee's place of business, and if a licensee is performing services away from the licensee's place of business, the licensee shall present identification issued by the board showing the license number.

(3) Licenses are not transferable.

**NEW SECTION. Section 15. Revocation or suspension of license.** (1) A licensee who performs or any master licensee whose associated firm performs forced air heating, ventilation, and air conditioning work in any building that does not meet the standards set by the applicable mechanical code may have the licensee's license revoked or suspended by the board.

(2) Proceedings for the revocation or suspension of a license may be commenced by the board upon its own motion or upon motion of any person. All complaints must be in writing, verified, and filed with the department.

(3) The board may consider the complaint sufficient as received or require further investigation. When a complaint is considered sufficient by the board, it shall provide for a hearing at a specified time and place, and the department shall notify the licensee of the hearing and the complaint at least 10 days before the day selected for the hearing.

**NEW SECTION. Section 16. Citation and fine for failure to display license.** (1) A citation for failure to display a forced air heating, ventilation, and air conditioning license or proof of licensure issued by an employee of the department must include:

- (a) the time and date on which the citation is issued;
- (b) the name, address, mailing address, and signature of the person to whom the citation is issued;
- (c) reference to the statutory authority to issue the citation;
- (d) the name, title, affiliation, and signature of the person issuing the citation;
- (e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and
- (f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

- (a) \$100 for the first offense;
- (b) \$250 for the second offense; and
- (c) \$500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person, firm, or corporation that is issued a citation may pay the fine to the board within 5 business days of the date of issuance. The board may, upon finding that the person, firm, or corporation has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person, firm, or corporation that refuses to sign and accept a citation commits a

1 misdemeanor, punishable in the same manner as provided in 37-1-318.

2

3 NEW SECTION. **Section 17. Penalty.** A person, firm, or corporation convicted of violating the  
4 provisions of [sections 1 through 3 and 5 through 17] shall be fined an amount not less than \$100 or more  
5 than \$1,000 for each separate offense.

6

7 NEW SECTION. **Section 18. Declaration of public interest.** It is hereby declared that the public  
8 health and welfare require that minimum standards for the planning, installing, altering, extending, and  
9 repairing of mechanical equipment or systems be established for the protection of the people of the state.

10

11 NEW SECTION. **Section 19. Department to prescribe minimum standards.** The department of  
12 commerce shall by rule prescribe minimum standards that, after [the effective date of this act], are in  
13 effect for all mechanical equipment or systems installations, except as provided in [section 21].

14

15 NEW SECTION. **Section 20. Mechanical permit required.** Except as provided in [section 21], it  
16 is unlawful for any person to install, remove, alter, or repair mechanical equipment or systems or parts of  
17 mechanical equipment or systems without a mechanical permit first being obtained from the department  
18 of commerce.

19

20 NEW SECTION. **Section 21. Exceptions to mechanical permit requirements.** (1) A permit is not  
21 required for any minor mechanical equipment or systems replacement or repair work, the performance of  
22 which does not have a significant potential for creating a condition hazardous to public health and safety.

23 (2) A permit is not required if the installation of mechanical equipment or parts occurs in the  
24 jurisdictional area governed by a local government if:

25 (a) a local government mechanical code is in effect that covers installation of mechanical  
26 equipment; and

27 (b) a local government provides mechanical equipment installation inspection procedures.

28 (3) The provisions of [sections 18 through 27] do not apply to:

29 (a) regularly employed maintenance personnel doing maintenance work on the business premises  
30 of their employer, unless the work is subject to the permit provisions of [sections 18 through 27]; or



(b) mines, mills, smelters, railroads, or public utilities, except for occupied structures as outlined in 50-60-102(1)(c).

**NEW SECTION. Section 22. Application for permit -- issuance.** (1) A person requiring a mechanical permit shall apply to the department of commerce or local government on forms provided by the department or local government.

(2) The department may require plans, specifications, or drawings and other information that the department considers necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the scope of the work is in compliance with the state mechanical code, it shall issue the mechanical permit upon payment of the required fee as established by the department.

**NEW SECTION. Section 23. Permit fees.** (1) The department of commerce shall establish mechanical permit fees in accordance with the Montana Administrative Procedure Act, and the fees must be deposited in the state special revenue fund to the credit of the department for use in the administration and enforcement of [sections 18 through 27] and the state mechanical code.

(2) The fees established pursuant to this section must be commensurate with the costs of the administration and enforcement of [sections 18 through 27].

**NEW SECTION. Section 24. Inspection to ensure compliance.** (1) All mechanical systems may be inspected by the department of commerce or local government certified to perform an inspection pursuant to 50-60-302, to ensure compliance with the requirements of the state mechanical code.

(2) As part of an inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with mechanical activities if the person is on the job site.

(3) The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of forced air heating, ventilation, and air conditioning contractors.

**NEW SECTION. Section 25. Department authorized to order work stopped for noncompliance.**

1 If work is done contrary to the provisions of [sections 18 through 27] or the state mechanical code, the  
2 department of commerce may, after a hearing conducted under the provisions of the Montana  
3 Administrative Procedure Act, order the work stopped by written notice served on any person engaged  
4 in the work.

5

6 NEW SECTION. **Section 26. Suspension or revocation of permit.** The department of commerce  
7 may suspend or revoke a mechanical permit whenever it is issued in error or on the basis of incorrect  
8 information supplied or the work performed is in violation of any of the provisions of [sections 1 through  
9 3 and 5 through 17] or [sections 18 through 27].

10

11 NEW SECTION. **Section 27. Penalty for violation.** A person served with an order pursuant to  
12 [sections 18 through 27] who fails to comply with the order not later than 30 days after service or within  
13 the time set by the department of commerce or local building department for compliance or a person  
14 working on the mechanical installation who knowingly violates any of the applicable provisions of the state  
15 mechanical code is guilty of a misdemeanor and shall be fined an amount not less than \$10 or more than  
16 \$100.

17

18 **Section 28.** Section 37-1-317, MCA, is amended to read:

19 **"37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.** (1) The  
20 department shall investigate complaints or other information received concerning practice by an unlicensed  
21 person of a profession or occupation for which a license is required by this title.

22 (2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from  
23 practicing, without a license, a profession or occupation for which a license is required by this title. In  
24 addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this  
25 section may be held in contempt of court.

26 (b) A person subject to an injunction for practicing without a license may also be subject to  
27 criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging  
28 that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the  
29 unlicensed practice of a licensed profession or occupation on a certain day in a certain county without  
30 averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316, [section 16], and 37-69-310, from a person at a job site who is performing plumbing, forced air heating, ventilation, and air conditioning, or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements."

**Section 29.** Section 50-60-109, MCA, is amended to read:

**"50-60-109. Injunctions authorized.** (1) The construction or use of the building in violation of any provision of the state or municipal building code, state mechanical code, or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section will be governed by the Montana Rules of Civil Procedure."

**NEW SECTION.** **Section 30. Persons or firms working in field of forced air heating, ventilation, and air conditioning grandfathered -- provisional license -- requirements.** (1) For the purposes of [sections 6 through 17], a person, firm, or corporation that has actively worked in the field of forced air heating, ventilation, and air conditioning prior to [the effective date of this act] is considered licensed by the state.

(2) A person, firm, or corporation licensed as provided in subsection (1) shall present evidence considered suitable by the board of direct experience in the field of forced air heating, ventilation, and air conditioning within 1 year of [the effective date of this act] and pay the license fee established by the board in order to continue to work in the field of forced air heating, ventilation, and air conditioning.

(3) A person, firm, or corporation failing to apply to the board within the time period provided for in subsection (3) shall apply for licensure as provided for in [sections 6 through 17].

**NEW SECTION.** **Section 31. Initial board appointments.** The initial appointments governing

1 individuals engaged in the field of forced air heating, ventilation, and air conditioning to the board of forced  
2 air heating, ventilation, and air conditioning contractors established pursuant to [section 4] are as follows:

3 (1) two masters who have been residents of this state for more than 1 year and who have been  
4 working in the field of forced air heating, ventilation, and air conditioning as a master for at least 5 of the  
5 8 years immediately preceding appointment; and

6 (2) two journeymen who have been residents of this state for more than 1 year and who have  
7 been working in the field of forced air heating, ventilation, and air conditioning as journeymen for at least  
8 5 of the 8 years immediately preceding appointment.

9

10 NEW SECTION. Section 32. Codification instruction. (1) [Sections 1 through 3, 5 through 17,  
11 and 30] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to  
12 [sections 1 through 3, 5 through 17, and 30].

13 (2) [Section 4] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and  
14 the provisions of Title 2, chapter 15, part 18, apply to [section 4].

15 (3) [Sections 18 through 27] are intended to be codified as an integral part of Title 50, chapter  
16 60, and the provisions of Title 50, chapter 60, apply to [sections 18 through 27].

17

18 NEW SECTION. Section 33. Effective date. [This act] is effective July 1, 2001.

19

20 NEW SECTION. Section 34. Applicability. [This act] applies to licenses and permits issued on or  
21 after July 1, 2002.

22

- END -